

Date of decision: 12-12-1995

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr. G.G.Mali for the petitioner
Mr. D.A.Bambania for the respondents.

Coram: S.K.KESHOTE, J
(12-12-1995)

ORAL JUDGMENT:

The petitioner was appointed as police constable in the armed police force on 18-12-1944. At the time of recruitment, as stated by the petitioner, the recruiting officer did not ask the petitioner to produce certificate of educational qualification as well as date of birth. The petitioner was later on promoted as Drill Master Subedar, P.S.I. and in the year 1975 he was promoted as Police Inspector. But the petitioner had foregone the promotion to the post of Police Inspector due to his personal reasons.

2. The date of birth of the petitioner, as per school leaving certificate, is 20th October, 1928. In the year 1977 for the first time the petitioner had come to know that his date of birth was wrongly entered in the service book as 18-2-1925. Considering the date of birth of the petitioner as 18-2-1925 the respondents sought to superannuate the petitioner on 18-3-1983. The petitioner contended that as per the correct date of birth he has to continue in service till 19th October, 1986. The petitioner has come with the case that the representation made by him on 1-2-1977 for correcting his date of birth was negatived by the Department without hearing him and without giving any reasons vide order dated 3rd May, 1979. This was done by the Inspector General of Police, Gujarat. The petitioner then approached respondent No.1 State of Gujarat, for correction of his date of birth in the service records, but his request has not been considered. Hence he filed the present writ petition before this Court.

3. In reply to the writ petition, the facts which have been narrated by the petitioner have not been controverted. The date of birth which is mentioned in the school leaving certificate of the petitioner has also not been disputed. According to the respondents, as per the statement made by the petitioner at the time of recruitment his date of birth has been calculated.

4. The writ petition was admitted by this Court on 14-2-1983 and interim relief in terms of R

granted. Para 15(d) of the petition reads as follows:

"15(d). Restrain the respondents from relieving the petitioner from service on 17-2-1983 with a direction to the respondents to continue the petitioner in service till 19-10-1986, pending admission, hearing and final disposal of this petition."

The aforesaid interim relief has been granted by this Court

before the petitioner could have been retired from service on 17-2-1983. It is not in dispute between the parties that as per the interim relief the petitioner was ordered to be continued by the Department till 19th October, 1986 and thereafter he has retired from service.

5. In view of the fact that the petitioner has already retired on 18-10-1986 and he has been given all the benefits accordingly, as well as he has produced strong evidence in support of his claim of date of birth as 20th October, 1928, and the date of birth in the service record has been recorded on the basis of the oral statement without any documentary evidence, this writ petition has to be accepted. There is yet another ground which weighs in favour of the petitioner. This Court has protected the petitioner on 14-2-1983 by granting interim relief which had the effect of granting the final relief. Now at this stage, when the petitioner has retired about nine years back, it will cause hardship as well as prejudice to the petitioner in case the petition is decided otherwise. In view of these facts, nothing in substance remains to be decided except to confirm the interim relief which has been granted by this Court and which has been acted upon by the respondents and the fruits of which have been taken by the petitioner.

6. In the result this writ petition is allowed. Rule made absolute accordingly, with no order as to costs.

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